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Testimony on SB389 [Shockley], allowing state and local police officers to enforce federal criminal immigration laws

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To the Montana Senate Judiciary Committee:

I strongly support SB389, which would encourage Montana law officers to cooperate with federal immigration authorities. As the bill's preface explains, the ratio of illegal aliens in our country to Immigration and Customs Enforcement (ICE) interior agents is at least 4,000:1. The federal forces are overwhelmed!

But state and local police are a huge force multiplier, reducing that ratio (nationally) to about 10:1. And note that they, like state senators, swear an oath to the U.S. Constitution. They are thus empowered to enforce federal laws. (For instance, local police naturally respond to robberies of federally-chartered banks.)

As a Center for Immigration Studies article --- I've attached the first page --- by law professor Kris Kobach (University of Missouri at Kansas City) explains, state and local authority is both inherent and spelled out in a 1996 federal statute. SB389 would explicitly spell out the desire of Montana policymakers that Montana peace officers join this critical national effort..

The 287(g) program associated with that statute is now in use in some local jurisdictions. Its most notable impact has been in Mecklenburg County, North Carolina [Charlotte and vicinity], where Sheriff Jim Pendergraph (a Democrat) has received enthusiastic support from the region's Congresswoman Sue Myrick (a Republican). Please see my second attachment. A quote from the article:

Since screening began May 1, [2006], Pendergraph said, his department has found that most of the immigrants who pass through his jail are here illegally.

"So many illegal immigrant criminals have been identified through my 287(g) program, it is causing me a jail space problem," Pendergraph said

Some police jurisdictions say they don't want to use this sort of authority because they want to "maintain a good working relationship with the 'immigrant community.'" Harald Martin, a retired police officer and friend from Anaheim, CA who has been heavily involved in this whole subject told me,

That's a total red herring. Illegal aliens can't be victims of a crime if they're not here in the first place. More important, they won't be the suspects in a crime if they're not here.

He added that if police have and use these powers, the overall level of criminality in their jurisdiction will drop: In Anaheim, 35% of their arrests were illegal aliens, whose fraction of Anaheim's population is about 8%.

Getting local law enforcement involved will probably make an enormous difference. It is part of the "attrition through enforcement" strategy --- once illegal aliens realize that their futures here look grim, many of them will deport themselves. This was the experience with President Eisenhower's "Operation Wetback" [the official name] in 1954: About 100,000 illegal aliens were forcibly deported and close to a million left on their own.

SB389 is an exercise in common sense.

www.cis.org/articles/2004/back604.pdf

State and Local Authority to Enforce Immigration Law A Unified Approach for Stopping Terrorists

By Kris W. Kobach

The terrorist attacks of September 11, 2001, underscored for all Americans the need to restore the rule of law in the immigration arena. Terrorists were able to enter the country undetected, overstay their visas with impunity, and move freely within the country without interference from local law enforcement officers. Each of these realities created a vulnerability that the hijackers exploited.

Enforcing our nation's immigration laws is one of the most daunting challenges faced by the federal government. With an estimated 8-10 million illegal aliens already present in the United States and fewer than 2,000 interior enforcement agents at its disposal, the Bureau of Immigration and Customs Enforcement (BICE) has a Herculean task on its hands — one that it simply cannot accomplish alone.

The assistance of state and local law enforcement agencies can mean the difference between success and failure in enforcing immigration laws. The more than 650,000 police officers nationwide represent a massive force multiplier.

This *Backgrounder* briefly summarizes the legal authority upon which state and local police may act in rendering such assistance and describes the scenarios in which this assistance is most crucial. It does not cover the provisions of Section

287(g) of the Immigration and Nationality Act (INA) (that is, Section 133 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) of 1996 titled "Acceptance of State Services to Carry Out Immigration Enforcement"), since the scope of such delegated authority is evident on the face of the Act. Rather, this *Backgrounder* describes the inherent arrest authority that has been possessed and exercised by state and local police since the earliest days of federal immigration law.

It has long been widely recognized that state and local police possess the inherent authority to arrest aliens who have violated *criminal* provisions of the INA. Once the arrest is made, the police officer must contact federal immigration authorities and transfer the alien into their custody within a reasonable period of time. Bear in mind that the power to arrest — and take temporary custody of — an immigration law violator is a subset of the broader power to "enforce." This is an important distinction between inherent *arrest* authority and 287(g) authority to *enforce* — which includes arresting, investigating, preparing a case, and all of the other powers exercised by BICE agents.

Where some confusion has existed in recent years is on the question of whether the same authority extends to arresting aliens who have

Mr. Kris W. Kobach is a professor at the University of Missouri-Kansas City School of Law. He started as a White House Fellow in the personal office of Attorney General John Ashcroft days before the 9/11 attacks; after the Fellowship ended, he remained as Mr. Ashcroft's Counsel, until 2003. Mr. Kobach holds a bachelor's degree in government from Harvard University, a doctorate in political science from Oxford University, and a juris doctorate from Yale Law School.

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Officials say locals swamped by illegals

Most at hearing say feds ignore immigration

Gastonia | A federal effort to enlist local law enforcement officers to help identify and deport criminal illegal immigrants is a mere stopgap in the face of a much bigger problem, officials told a congressional panel Friday.

"I and many others strongly disagree with President Bush's policy, or lack of, on illegal immigration," Mecklenburg County Sheriff Jim Pendergraph told four House members at a hearing on empowering local law enforcement to combat illegal immigration.

"The Congress of the United States has let us down by the lack of action on the illegal immigration issue for decades," Pendergraph told the panel that included North Carolina Republican Reps. Virginia Foxx, Patrick McHenry and Sue Myrick.

Rep. Mark Souder, R-Ind., chairman of the subcommittee of the House Committee on Government Reform, also attended the hearing at Myrick's Gastonia office.

Pendergraph's department last winter signed a memorandum of understanding with federal Immigration and Customs Enforcement. The agreement allowed 12 deputies to be trained to screen the immigration status of people arrested in Mecklenburg, home to North Carolina's largest city, Charlotte.

The 287(g) program, as it is known, gives local officers access to ICE's database of fingerprints and photographs, which Pendergraph and others say is the only reliable way to identify the immigration status of an arrested person.

Since screening began May 1, Pendergraph said, his department has found that most of the immigrants who pass through his jail are here illegally.

"So many illegal immigrant criminals have been identified through my 287(g) program, it is causing me a jail space problem," Pendergraph said.

Pendergraph's department is one of only seven departments in five states with such agreements and access to ICE's database.

Gaston County Sheriff Alan Cloninger told the panel his department received approval Thursday to join the program, but Pendergraph said many other law enforcement leaders who have tried repeatedly to participate in it tell him they have been turned down or ignored. An estimated 405,000 illegal immigrants live in North Carolina, McHenry said.

Michael Lands, district attorney for Gaston County, said the federal government doesn't have enough agents to handle an illegal immigrant population of that size.

"Ultimately, and I mean no disrespect, this is a federal government problem that you need to address," he told the panel.

The government's approach to illegal immigrants, Lands said, has been "to wait until they commit a state crime and then determine if it's serious enough to deport them."

Souder responded that federal, state and local governments will have to cooperate to improve the system.

"Somehow we've got to figure out how to do this together," he said.

The mother of a Gaston County teacher who died in a July 2005 hit-and-run crash in Brunswick County caused by an illegal immigrant pleaded with the panel for a solution.

Scott Gardner was on vacation with his family when their car was struck by a truck driven by Ramiro Gallegos, who was intoxicated and had a history of drunken driving arrests.

Wife Tina Gardner remains in a vegetative state at a nursing home, her mother-in-law Emily Moose said Friday. The couple's two young children are effectively orphaned. "I believe the cost of human life is too high to pay for cheap labor," Moose said, near tears. Gallegos was sentenced earlier this year to 14 to 18 years in prison after pleading guilty to a charge of second-degree murder.

"If you break the law to get here, you're not going to respect the law once you're here," McHenry said.

That comment, plus a statement by Moose that "millions" of lives have been lost to illegal immigration and a complaint by Foxx that the media obsesses about the number of U.S. deaths in Iraq while saying little "about the people being killed by illegal immigrants every day," appeared to motivate Lands to interject.

"I think it needs to be said - and you all know - illegals aren't the only ones out there committing crime," he said. "There's plenty of crime by American-born citizens."
